

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EMANUEL H. JONES

Plaintiff, : C.A. No. 06-674

v. : JURY TRIAL DEMANDED

OFFICER NORRIS and NEW CASTLE
COUNTY POLICE DEPARTMENT,

Defendants. :

**ANSWER OF DEFENDANT
NEW CASTLE COUNTY POLICE DEPARTMENT**

Defendant, New Castle County Police Department, Answers the Amended Complaint and admits, denies and alleges, as follows:

STATEMENT OF CLAIM

1. To the extent a response is required by Answering Defendant New Castle County Police Department to the Plaintiff's allegations in his Complaint and Amended Complaint about any alleged wrongdoing on the part of the Answering Defendant on May 27, 2006 or other relevant times, such allegations are denied.

2. Answering Defendant New Castle County Police Department specifically denies any allegations of failure to train Officer Norris or other officers allegedly involved in the May 27, 2006 incident about which the Plaintiff complains in this action.

3. All other allegations in the Complaint and Amended Complaint that require a response from the Answering Defendant are denied.

AFFIRMATIVE DEFENSES

First Affirmative Defense

The claims alleged in the Complaint and Amended Complaint fail to state a federal or state claim upon which relief can be granted.

Second Affirmative Defense

The New Castle County Police Department is not an entity that can be sued and can not be a party to this action.

Third Affirmative Defense

Plaintiff's damages, if any, under State law are limited by 10 *Del.C.* § 4013, *et seq.*

Fourth Affirmative Defense

The Answering Defendant is immune from liability for punitive damages.

Fifth Affirmative Defense

The Answering Defendant was not negligent, reckless, willful, wanton, unlawful or malicious.

Sixth Affirmative Defense

Any damages or injury, constitutional or otherwise, suffered by Plaintiff, to the extent actually incurred, were not caused by any conduct, action, inaction, policy or custom of the Answering Defendant.

Seventh Affirmative Defense

The actions and conduct of the Answering Defendant, to the extent they occurred as alleged, were objectively reasonable under the circumstances, and as such, the Answering Defendant enjoys qualified immunity from all liability therefore.

Eighth Affirmative Defense

The actions and conduct of the Answering Defendant did not violate any clearly established constitutional, federal, statutory or other rights of which the Answering Defendant reasonably should have been aware, and as such, the Answering Defendant is entitled to qualified immunity.

Ninth Affirmative Defense

The actions and conduct of the Answering Defendant, to the extent they occurred as alleged, were undertaken in a good faith performance of official duties, without wantonness or malice, and were therefore, privileged under applicable State law.

Tenth Affirmative Defense

The force allegedly used by the Answering Defendant did not rise to the level of a constitutional violation and, therefore, Plaintiff did not suffer any infringement of his constitutional rights.

Eleventh Affirmative Defense

Plaintiff is not entitled to the relief petitioned for in the Complaint or Amended Complaint or any other relief by virtue of the matters and admissions of the Plaintiff set forth in the Complaint and Amended Complaint.

Twelfth Affirmative Defense

Plaintiff's claims are barred by collateral estoppel and res judicata.

Thirteenth Affirmative Defense

Any injury or damages suffered by the Plaintiff, to the extent actually incurred, were caused by reason of the Plaintiff's own wrongful and/or unlawful conduct and acts, reckless misconduct and/or negligence.

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CERTIFICATE OF SERVICE

I, Julie M. Sebring, Esq., Assistant County Attorney, hereby certify that on March 1, 2007, I electronically filed the foregoing "Answer of Defendant New Castle County Police Department" with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

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/s/ Julie M. Sebring
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